Mohd Azizi bin Abu Naim v Tan Sri Dato' Haji Mahiaddin bin Md Yasin (in his capacity as the President of Malaysian United Indigenous Party (BERSATU)) & Ors

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO WA-24NCvC-2308–06 OF 2024
ROZ MAWAR JC
12 AUGUST 2024

Civil Procedure — Injunction — Interim injunction — State assemblyman whose membership in political party was terminated sought to injunct Election Commission ('EC') from conducting by-election after his seat was declared vacant by Assembly's Speaker — Whether injunction could not issue against EC as government body under s 29 of Government Proceedings Act 1956 and s 54 of Specific Relief Act 1950 — Whether Election Commission Act 1957 precluded legal suits against EC for any act done in execution of its duties — Whether Speaker was not required under State Constitution to give assemblyman opportunity to be heard before declaring seat vacant — Whether injunction if granted would interfere with democratic and electoral processes — Whether public interest demanded that by-election be allowed to run its course unimpeded — Whether assemblyman's proper course of action was to ventilate his grievances in his main suit against the parties concerned

The plaintiff, who was at all material times a member of the BERSATU political party, was both a Member of Parliament (for Gua Musang) as well as the state assemblyman for Nenggiri in Kelantan. Despite being a BERSATU member, he had won both the parliamentary and state seats as a candidate for the PAS political party, which together with BERSATU, were part of the Perikatan Nasional ('PN') coalition that formed the Kelantan State Government. PN, however, was the opposition party in Parliament where the majority seats were held by a unity government. In November 2023, when the plaintiff publicly declared his support for the unity government's administration and the Budget it had tabled in Parliament, the second defendant, on behalf of BERSATU's supreme council, demanded that the plaintiff retract his said declaration of support. As the demand was not heeded, BERSATU expelled the plaintiff from the party. On being informed of this development, the third defendant ('the Speaker') declared that the Nenggiri state seat had fallen vacant under the provisions of the Kelantan State Constitution and officially notified the Election Commission ('EC') accordingly. Within days, the plaintiff filed the instant originating summons ('OS') to challenge the Speaker's declaration. The plaintiff sought a declaration that his purported sacking from BERSATU was invalid, that he remained as

the valid assemblyman for Nenggiri and that recently-passed anti-hopping laws did not apply to him. Pending the disposal of the OS, the plaintiff sought an interim injunction to preserve the status quo and prevent the EC from holding a by-election for Nenggiri. The EC had already announced the nomination and polling dates for the Nenggiri by-election and by the time the interim injunction application came up for hearing inter partes, the postal balloting for the seat had been completed, the nomination date was over (in which the plaintiff did not participate) and the two candidates vying for the seat had already begun their campaigning. Among other things, the plaintiff argued that: (a) the Speaker had breached the rules of natural justice by not giving him an opportunity to be heard before notifying the EC that the Nenggiri seat had fallen vacant; (b) the OS would be rendered nugatory and the plaintiff would suffer irreparable harm if the by-election proceeded and a new candidate was elected. In essence, the collective submissions of the defendants were that: (i) the injunction application was frivolous and vexatious and interfered with the democratic and electoral processes, especially in this case where the postal balloting had been completed and the nominated candidates vying for the seat had already begun their campaigning; (ii) the Speaker had no duty under the law to hear the plaintiff before declaring the Nenggiri seat vacant; (iii) Sections 29 and 54, respectively, of the Government Proceedings Act 1956 ('the GPA') and the Specific Relief Act 1950 ('the SRA') prohibited an injunction from being granted against the government and/or its officers (including the EC) in the performance of their public/constitutional duties; (iv) the plaintiff had not pleaded any cause of action against the EC or the Speaker to form the basis for the grant of an injunction; (v) as the plaintiff decided not to contest in the by-election, he could not claim that he had suffered irreparable harm; and (vi) the purpose of the anti-defection laws under the Federal Constitution and the Kelantan State Constitution was to make elected representatives accountable to voters for their political affiliations.

Held, dismissing the interim injunction application:

(1) The plaintiff had failed to satisfy the requirements for the grant of an interlocutory injunction. His recourse, if any, lay in the substantive hearing of his claims (including that the termination of his membership in BERSATU was unlawful) rather than in seeking to halt the electoral process through an injunction at this stage. The application itself raised complex constitutional issues that were more appropriately addressed at the hearing of the OS. The balance of convenience clearly lay in favour of allowing the democratic process to proceed unimpeded. The plaintiff's decision not to contest in the by-election significantly undermined his claim of irreparable harm. Moreover, the statutory prohibitions under s 29(2) of the GPA and s 54 of the SRA against injunctions interfering with government functions as well as the ouster

clause in s 18C of the Societies Act 1966, presented formidable legal barriers to the reliefs sought by the plaintiff (see paras 37 & 64–65).

(2) The wider public interest in maintaining the integrity of the democratic process and ensuring timely elections outweighed the plaintiff's individual interests in this case. It was against the public interest to freeze the effect of the Speaker's notice to the EC about the vacancy in the Nenggiri seat or to put a halt to the by-election that was already underway. The balance of convenience and public interest strongly favoured allowing the electoral process to proceed unimpeded. Granting an injunction could potentially disenfranchise the voters in the Nenggiri state seat and create uncertainty in the democratic process (see paras 45 & 50).

(3) The plaintiff had not shown that he had a clear cause of action against the EC, which was a pre-requisite for the granting of an interlocutory injunction against it. The statutory protection enjoyed by the EC under the Election Commission Act 1957 further supported the argument against granting an interim injunction to stay the by-election. There also existed in this case, practical considerations, viz, the EC had already taken significant steps towards conducting the by-election, including issuing the writ and announcing the nomination and polling dates. The campaigning had also already started. Halting the process now could lead to logistical complications and unnecessary public expenditure (see paras 46–47).

(4) Article 31A of the Kelantan State Constitution did not require the Speaker to hear the plaintiff first before he declared the Nenggiri seat vacant. The plaintiff's complaint on this point was untenable. The facts showed that the Speaker had executed his legal obligations sufficiently (see para 49).

(5) The plaintiff was never prevented from contesting in the by-election to win back the Nenggiri seat. His failure to contest meant that he was no longer interested in running for the seat. He had a clear opportunity to potentially remedy the situation and mitigate any possible damages he might have suffered but he chose not to pursue it. That rendered his application for the injunction academic and serving no useful purpose. It also significantly weakened the plaintiff's claim that he would suffer irreparable harm if the injunction was not granted. The by-election would determine the true will of the people. It was an opportunity for the plaintiff to show whether or not the electorate approved of him as their representative (see paras 51–52, 54 & 57).

(6) The Federal Court in *Zulkifli bin Ibrahim v The Penang State Legislative Assembly & Anor* (Civil Appeal No 06(RS)-1–05 of 2022) (unreported) held that changing political affiliations was not a

constitutionally–protected right for elected representatives. The judgment in that case undermined the plaintiff's argument that his right to support the current government or change political allegiances was protected under the Federal Constitution when it was clearly ruled in that case that such actions by elected representatives were not covered by the constitutional right of association under art 10. The judgment supported the validity of anti-hopping laws both at the federal and state levels and provided a constitutional basis for actions taken against elected representatives who changed their political allegiances. It thus undermined key aspects of the plaintiff's claims and supported the defendants' argument that the democratic process, including the holding of the by-election, should be allowed to proceed without judicial interference through injunctions (see paras 59–63).

[Bahasa Malaysia summary

Plaintif pada setiap masa material merupakan ahli parti politik BERSATU dan merupakan Ahli Parlimen (Gua Musang) dan juga Ahli Dewan Undangan Negeri (ADUN) Nenggiri di Kelantan. Walaupun beliau merupakan ahli BERSATU, beliau telah memenangi kedua-dua kerusi Parlimen dan DUN sebagai calon parti politik PAS, yang bersama-sama dengan BERSATU, yang merupakan sebahagian daripada gabungan Perikatan Nasional ('PN') yang membentuk Kerajaan Negeri Kelantan. PN walaubagaimanapun adalah parti pembangkang di Parlimen di mana kerusi majoriti dipegang oleh kerajaan perpaduan. Pada November 2023, plaintif secara terbuka mengisytiharkan sokongannya terhadap pentadbiran kerajaan perpaduan dan Belanjawan yang dibentangkan di Parlimen. Defendan kedua bagi pihak majlis tertinggi BERSATU, menuntut plaintif menarik balik pengisytiharan sokongannya. Oleh kerana tuntutan itu tidak dilayani, BERSATU memecat plaintif daripada partinya. Apabila dimaklumkan mengenai keputusan ini, defendan ketiga ('Speaker') mengisytiharkan bahawa kerusi DUN Nenggiri telah kosong di bawah peruntukan Perlembagaan Negeri Kelantan dan secara rasmi memaklumkan kepada Suruhanjaya Pilihan Raya ('SPR'). Dalam beberapa hari, plaintif memfailkan saman pemula ini ('SP') untuk mencabar pengisytiharan Speaker tersebut. Plaintif memohon deklarasi bahawa pemecatan beliau daripada BERSATU adalah tidak sah, bahawa beliau kekal sebagai ADUN yang sah untuk Nenggiri dan undang-undang anti-lompat parti yang diluluskan baru-baru ini tidak terpakai kepadanya. Sementara menunggu pelupusan SP itu, plaintif memohon injunksi interim untuk mengekalkan status quonya dan menghalang SPR daripada mengadakan pilihan raya kecil untuk Nenggiri. SPR telah mengumumkan pencalonan dan tarikh pengundian untuk pilihan raya kecil Nenggiri. Ketika permohonan injunksi interim ditetapkan untuk untuk pendengaran pihak-pihak, undi pos untuk kerusi itu telah selesai dan tarikh pencalonan telah berakhir (di mana plaintif tidak mengambil bahagian). Kedua-dua calon yang bersaing untuk kerusi itu juga telah pun memulakan kempen mereka. Antara lain, plaintif

berhujah bahawa: (a) Speaker telah melanggar peraturan keadilan semula jadi dengan tidak memberi peluang kepadanya untuk didengar sebelum memaklumkan kepada SPR bahawa kerusi Nenggiri telah kosong; dan (b) SP akan menjadi sia-sia dan plaintif akan mengalami kerugian yang tidak boleh diperbaiki sekiranya pilihan raya kecil diteruskan dan calon baharu dipilih. Pada asasnya, hujahan kolektif defendan adalah bahawa: (i) permohonan injunksi adalah remeh dan menjengkelkan serta mengganggu proses demokrasi dan pilihan raya, terutamanya di dalam kes ini di mana pengundian pos telah selesai dan calon-calon yang bertanding untuk kerusi itu telah pun memulakan kempen mereka; (ii) Speaker tidak mempunyai kewajipan di bawah undang-undang untuk mendengar plaintif sebelum mengisytiharkan kerusi Nenggiri tersebut kosong; (iii) Seksyen 29 dan 54, Akta Prosiding Kerajaan 1956 ('APK') dan Akta Relif Spesifik 1950 ('ARS') melarang injunksi dikenakan terhadap kerajaan dan/atau pegawainya (termasuk SPR) dalam melaksanakan tugas awam/perlembagaan mereka; (iv) plaintif tidak memplidkan sebarang kausa tindakan terhadap SPR atau Speaker untuk membolehkan injunksi diberikan; (v) oleh kerana plaintif memutuskan untuk tidak bertanding dalam pilihan raya kecil, beliau tidak boleh mengatakan bahawa beliau telah mengalami kerugian yang tidak boleh diperbaiki; dan (vi) tujuan undang-undang anti lompat parti di bawah Perlembagaan Persekutuan dan Perlembagaan Negeri Kelantan adalah untuk menjadikan wakil rakyat bertanggungjawab kepada pengundi atas tujuan politik mereka.

Diputuskan, menolak permohonan injunksi interim:

(1) Plaintif telah gagal memenuhi keperluan injunksi interlokutori. Beliau boleh memohon untuk pendengaran substantif (mengenai penamatan keahliannya dalam BERSATU adalah menyalahi undang-undang) dan bukannya menghentikan proses pilihan raya melalui injunksi pada peringkat ini. Permohonan itu sendiri menimbulkan isu-isu perlembagaan yang kompleks yang lebih sesuai untuk pendengaran SP. Keseimbangan kemudahan lebih memihak kepada proses demokrasi diteruskan tanpa halangan. Keputusan plaintif untuk tidak bertanding dalam pilihan raya kecil itu dengan ketara menjejaskan tuntutannya tentang kerugian yang tidak boleh diperbaiki. Selain itu, larangan di bawah s 29(2) APK dan s 54 ARS terhadap injunksi yang mengganggu fungsi kerajaan serta klausa penyingkiran dalam s 18C Akta Pertubuhan 1966 memberikan halangan undang-undang kepada relif yang dipohon plaintif (lihat perenggan 37 & 64–65).

(2) Kepentingan awam yang lebih luas dalam mengekalkan integriti proses demokrasi dan memastikan pilihan raya diadakan tepat pada masanya melebihi kepentingan individu plaintif di dalam kes ini. Adalah bertentangan dengan kepentingan awam untuk menghalang pemberitahuan Speaker kepada SPR mengenai kekosongan di kerusi Nenggiri atau menghentikan pilihan raya kecil yang telah berjalan.

Keseimbangan kemudahan dan kepentingan awam sangat memihak kepada membolehkan proses pilihan raya diteruskan tanpa halangan. Memberikan injunksi berpotensi melucutkan hak pengundi di kerusi DUN Nenggiri dan mewujudkan ketidakpastian dalam proses demokrasi (lihat perenggan 45 & 50).

(3) Plaintif tidak menunjukkan bahawa beliau mempunyai kausa tindakan yang jelas terhadap SPR, yang merupakan pra-syarat untuk membenarkan injunksi interlokutori. Perlindungan menurut undang-undang terhadap SPR di bawah Akta Suruhanjaya Pilihan Raya 1957 menyokong hujah untuk tidak membenarkan injunksi interim untuk menangguhkan pilihan raya kecil. Terdapat pertimbangan praktikal juga dalam kes ini iaitu SPR telah mengambil langkah penting ke arah menjalankan pilihan raya kecil, termasuk mengeluarkan writ dan mengumumkan pencalonan dan tarikh pengundian. Proses kempen juga telah pun bermula. Menghentikan proses pada waktu ini boleh membawa kepada masalah logistik dan perbelanjaan awam yang tidak perlu (lihat perenggan 46–47).

(4) Perkara 31A Perlembagaan Negeri Kelantan tidak memerlukan Speaker mendengar plaintif terlebih dahulu sebelum mengisytiharkan kerusi Nenggiri kosong. Hujahan plaintif mengenai perkara ini tidak dapat dipertahankan. Fakta telah menunjukkan bahawa Speaker telah melaksanakan kewajipan undang-undangnya dengan secukupnya (lihat perenggan 49).

(5) Plaintif tidak pernah dihalang daripada bertanding dalam pilihan raya kecil untuk memenangi semula kerusi Nenggiri. Kegagalannya untuk bertanding bermakna beliau tidak lagi berminat untuk bertanding di kerusi itu. Plaintif mempunyai peluang yang jelas untuk memperbetulkan keadaan tersebut dan mengurangkan sebarang kemungkinan kerugian yang mungkin dialaminya namun memilih untuk tidak meneruskannya. Hal ini menjadikan permohonannya untuk injunksi menjadi akademik dan tidak mempunyai tujuan yang berguna. Ianya juga melemahkan tuntutan plaintif dengan ketara bahawa beliau akan mengalami kerugian yang tidak boleh diperbaiki sekiranya injunksi itu tidak diberikan. Pilihan raya kecil itu akan menentukan kehendak sebenar rakyat. Plaintif berpeluang untuk menunjukkan sama ada pengundi akan melantiknya sebagai wakil mereka atau tidak (lihat perenggan 51–52, 54 & 57).

(6) Mahkamah Persekutuan dalam kes *Zulkifli bin Ibrahim v The Penang State Legislative Assembly & Anor* (Civil Appeal No 06(RS)-1–05 of 2022) (unreported) memutuskan bahawa menukar gabungan politik bukanlah hak yang dilindungi oleh perlembagaan untuk wakil rakyat. Penghakiman dalam kes itu menolak hujahan plaintif bahawa haknya untuk menyokong kerajaan semasa atau menukar kesetiaan politik

dilindungi di bawah Perlembagaan Persekutuan. Adalah jelas diputuskan dalam kes itu bahawa tindakan sedemikian oleh wakil rakyat tidak dilindungi oleh hak perlembagaan untuk berpersatuan di bawah perkara 10. Penghakiman itu menyokong kesahihan undang-undang anti-lompat parti di peringkat persekutuan dan negeri dan merupakan satu asas perlembagaan untuk tindakan yang diambil terhadap wakil rakyat yang mengubah kesetiaan politik mereka. Oleh itu, ianya menjejaskan tuntutan-tuntutan utama plaintif dan menyokong hujahan defendan bahawa proses demokrasi, termasuk mengadakan pilihan raya kecil, harus dibenarkan untuk diteruskan tanpa campur tangan kehakiman melalui injunksi (lihat perenggan 59–63).]

Cases referred to

Abdul Ghapur bin Haji Salleh v Tun Datuk Haji Mohamed Adnan Robert Yang Di-Pertua Negeri Sabah & 7 Ors [1987] 2 MLJ 724 (refd)

Bimach Powerhouse Sdn Bhd v Sanizal bin Mahamad [2021] MLJU 1642; [2021] CLJU 1341, HC (refd)

Dato' Abu Hasan bin Sarif v Dato' Dr Abd Isa bin Ismail [2012] 2 MLJ 429; [2012] 1 MLRA 565, FC (refd)

Datuk Bandar Kuala Lumpur v Abdul Aziz bin Mohamed Ginan & Ors [2007] 4 MLJ 346; [2007] 1 MLRA 327, CA (refd)

Dewan Undangan Negeri Kelantan & Anor v Nordin bin Salleh & Anor [1992] 1 MLJ 697, SC (refd)

Election Commission, Malaysia v Abdul Fatah bin Haji Haron [1987] 2 MLJ 716; [1987] 1 MLRA 232; [1987] CLJ 92, SC (refd)

Government of Malaysia v Lim Kit Siang; United Engineers (M) Berhad [1988] 2 MLJ 12; [1988] 1 CLJ Rep 63, SC (refd)

Harris Mohd Salleh v The Returning Officer, Ismail bin Haji Majin & Ors and another action (No 2) [2001] 6 MLJ 610; [2001] 1 MLRH 755; [2001] 3 CLJ 838, HC (refd)

Interstate M&E Sdn Bhd & Ors v Fore-Sight Trading Sdn Bhd & Ors [2007] 6 MLJ 677, HC (refd)

Jaya Sudhir a/l Jayaram v Nautical Supreme Sdn Bhd & Ors [2019] 5 MLJ 1, FC (refd)

Keet Gerald Francis Noel John v Mohd Noor Bin Abdullah & Ors [1995] 1 MLJ 193; [1994] 1 MLRA 454; [1995] 1 CLJ 293; [1995] 1 AMR 373, CA (refd)

Majlis Peguam & Anor v Tan Sri Dato' Mohamed Yusoff bin Mohamed [1997] 2 MLJ 271, SC (refd)

Majlis Perbandaran Pulau Pinang v Boey Siew Than & Ors [1979] 2 MLJ 127, FC (refd)

Minister of Finance, Government of Sabah v Petrojasa Sdn Bhd [2008] 4 MLJ 641; [2008] 1 MLRA 705, FC (refd)

Nasri v Mesah [1971] 1 MLJ 32; [1970] 1 MLRA 363, FC (refd)

Pendaftar Pertubuhan Malaysia v PV Das (bagi pihak People's Progressive Party of

Malaysia (PPP)) (Datuk M Kayveas, intervener) [2003] 3 MLJ 449; [2003] 3 CLJ 404; [2003] 1 MLRA 357, CA (refd)
Pendaftar Pertubuhan v Datuk Justin Jinggut [2013] 3 MLJ 16; [2013] 2 CLJ 362; [2013] 2 MLRA 611; [2013] 2 AMR 310, FC (refd)
Pengarah Tanah & Galian Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd [1979] 1 MLJ 135, FC (refd)
Sabil Mulia (M) Sdn Bhd v Pengarah Hospital Tengku Ampuan Rahimah & Ors [2005] 3 MLJ 325, CA (refd)
Salihudin bin Hj Ahmad Khalid & Ors v Pendaftar Pertubuhan Malaysia & Anor [2020] 2 MLJ 244, CA (refd)
Shahrul Iman bin Abdullah v Pacific & Orient Insurance Co Bhd and another appeal [2020] MLJU 1877; [2021] 1 MLRA 658, CA (refd)
Sinlexion Construction & Decoration Sdn Bhd v BCB Berhad [2020] MLJU 610, HC (refd)
Siskina (owners of Cargo Lately Laden On Board) and others and Distos Compania Naviera SA [1979] AC 210, HL (refd)
Superintendent of Land and Surveys, Bahagian Mukah & Anor v Bunyak Anak Gadin & Ors [2016] MLJU 1739; [2016] 5 CLJ 558, CA (refd)
Superintendent of Lands and Surveys, Kuching Division & Ors v Kuching Waterfront Development Sdn Bhd [2009] 5 MLJ 607; [2009] 6 CLJ 753, CA (refd)
Suruhanjaya Pilihan Raya & Ors v Kerajaan Negeri Selangor [2018] 4 MLJ 350; [2018] 1 LNS 209, CA (refd)
Syarikat Perkapalan Selatan Sabah Sdn Bhd v State Government of Sabah & Ors [1991] 1 MLJ 370, HC (refd)
Tan Bun Teet & Ors v Menteri Sains, Teknologi dan Inovasi Malaysia & Ors [2013] 3 MLJ 676; [2013] 3 CLJ 1115, CA (refd)
Tengku Haji Jaafar & Anor v Government of the State of Pahang [1978] 2 MLJ 105; [1977] 1 MLRH 120 (refd)
The Speaker of Dewan Undangan Negeri of Sarawak Datuk Amar Mohamad Asfia Awang Nassar v Ting Tiong Choon & Ors and other appeals [2018] 12 MLJ 176, CA (refd)
Tun Dato Haji Mohamed Salleh bin Abas v Tan Sri Dato Abdul Hamid bin Omar & Ors [1988] 3 MLJ 149; [1988] 1 MLRA 149, SC (refd)
Zulkifli bin Ibrahim v The Penang State Legislative Assembly & Anor (Civil Appeal No 06(RS)-1–05 of 2022) (unreported), FC (refd)

Legislation referred to

Courts of Judicature Act 1964 s 25
Election Commission Act 1957 s 6
Federal Constitution arts 10, 10(1)(a), (1)(c), 49A, 113, 114(1)
Government Proceedings Act 1956 ss 2, 29, 29(2)
Laws of the Constitution of Kelantan arts 31, 31A, 31A(3), (4), 46(5), 113, 113(3), Schedule 8, ss 5, 30
Specific Reliefs Act 1950 ss 51, 54

A Societies Act 1966 ss 2, 9(c), 18C
Subordinate Courts Act 1948 s 107

SR Rajan Navaratnam (with Oazair Huneid Tyeb, Irdimah Syahira and Ain Zulaikha) (Shankar Govinth) for the plaintiff.
B *Chetan Jethwani (with Tang Jia Yearn) (Chetan Jethwani & Co) for the first and second defendants.*
Awang Armadajaya Awang Mahamud (with Takiyudin Hassan, Nik Asma Bahrum Nik Abdullah, Wan Rohimi Wan Daud, Yusfarizal Yussof, Mohd Faizi Che Abu, Mohd Tajuddin Abd Razak and Adam Mohamed) (Kelantan State
C *Legal Advisor Office) for the third defendant.*
Ahmad Hanir Hambaly @ Arwi (with Kogilambigai Muthusamy) (Attorney General's Chambers) for the fourth defendant.

Roz Mawar JC:

D

THE PLAINTIFF'S OBJECTIVE

[1] He had cited the President of Parti Pribumi Bersatu Malaysia ('BERSATU'), the Secretary General of BERSATU, the Speaker of the
E Kelantan State Legislative Assembly ('the Speaker'), and the Election Commission Malaysia ('EC') as defendants. In essence, vide the OS:

(a) the plaintiff is challenging the declaration of a casual vacancy for the N43 Nenggiri seat;

F (b) he is seeking declarations that he is still a member of BERSATU and still holds the N43 Nenggiri seat;

(c) the plaintiff requests injunctive relief to prevent the EC from conducting a by-election for the N43 Nenggiri seat; and

G (d) he argues that the anti-hopping law provisions do not apply to his situation, which would otherwise require him to vacate his seat.

[2] While the plaintiff raises various legal arguments about the validity of BERSATU's constitutional amendments (particularly cll 10.4–10.6, which he
H contends are ultra vires the Federal Constitution) and the process of his termination from the party (allegedly executed without due process and in violation of natural justice principles), these appear to be means to the ultimate end of retaining his elected position as the State Assemblyman for N43 Nenggiri. The preservation of this seat to him seems to be the core objective
I driving his legal action.

[3] The day after the filing of his OS, on 25 June 2024 the plaintiff applied to this court for an interim injunction ex parte (encl 6). The plaintiff brought encl 6 before this court on 26 June 2024 and the court had ordered the

application to be served on all the defendants to enable arguments to be heard inter partes. The plaintiff sought for an ad interim injunction pending the disposal of the inter partes arguments which this court repeated its stand that even for an ad interim application, this court was minded to hear it inter partes given the weighty issues involved.

[4] Parties then appeared before this court 24 hours later for the ad interim injunction application pending the hearing of the inter partes injunction application of encl 6. This court found that in reality the effect of the ad interim injunction would undoubtedly stay the powers of the EC of their constitutional duty. Submissions of irreparable damage was put forth by the plaintiff if the process of the by-election was to proceed. This court was not with the plaintiff on that point as it opined that the plaintiffs right to take part in whatever election that was to be held. This court was also of the opinion that the hearing of the inter partes application would not be jeopardised with the refusal of the ad interim order. This court iterated that it was most minded to adhere to the separation of powers between the Judiciary, the Legislative, and the Executive. Costs of the day was awarded to all the defendants in the sum of RM7,000 respectively.

[5] The hearing for the arguments of the interim injunction was fixed on 28 August 2024 but was brought earlier to 7 August 2024 as the polling was fixed for 17 August 2024.

ENCLOSURE 6: INTERIM INJUNCTION

[6] The plaintiff seeks to restrain the Speaker and EC from taking any steps to declare a casual vacancy in his State Assembly seat and from conducting a by-election for that seat. He seeks that the notice issued by the Speaker to the EC dated 19 June 2024 that declared the vacancy of the N43 Neggiri seat be stayed and not effective until the disposal of his OS. He also seeks to temporarily injunct the EC from taking any/further steps pursuant to the said notice. The plaintiff seeks to injunct the holding of the by-election by the EC for the vacant N43 Nenggiri seat. This application arises in the context of a broader challenge by the plaintiff to his purported termination from BERSATU and the constitutional implications of that termination on his elected positions.

[7] The application before this court raises complex issues at the intersection of constitutional law, political party governance, and the administration of elections. It requires a delicate balancing of individual rights, party autonomy, and the public interest in maintaining the integrity of the democratic process. The decision on whether to grant the injunctive relief sought will have significant implications not only for the parties involved but potentially for the

broader constitutional framework governing political representation in Malaysia. It is against this backdrop that this court must carefully consider the legal principles governing interlocutory injunctions and their application to the unique circumstances of this case.

[8] The key events leading up to this application are as follows:

(a) the plaintiffs membership with BERSATU started in 2017;

(b) during the 15th General Election (PRU15) held on 19 November 2022, the plaintiff contested and won the parliamentary seat for P032 Gua Musang. He was elected as a Member of Parliament representing PAS, not BERSATU although he was still a BERSATU member. He took his oath as a Member of the Dewan Rakyat on 19 December 2022;

(c) for the Kelantan State Election (PRN15) held on 12 August 2023, the plaintiff was appointed as a PAS candidate to contest the State Legislative Assembly seat for N43 Nenggiri. This is evidenced by a letter from PAS dated 26 July 2023. He was nevertheless a BERSATU member;

(d) the plaintiff won the N43 Nenggiri seat in the PRN15. This is confirmed by the Government *gazette* dated 29 August 2023 titled 'KEPUTUSAN PILIHAN RAYA YANG DIPERTANDINGKAN DAN PENYATA PENGUNDIAN SELEPAS PENJUMLAHAN RASMI UNDI BAH AG IAN PILIHAN RAYA NEGERI BAGI NEGERI KELANTAN';

(e) on 5 September 2023, the plaintiff took his oath of office as the State Assemblyman (ADUN) for the N43 Nenggiri constituency. This court notes that the plaintiff won both the P032 Gua Musang parliamentary seat and the N43 Nenggiri state seat as a candidate of PAS, not BERSATU, despite being a member of BERSATU;

(f) following the PRN15 results, Perikatan Nasional formed the State Government in Kelantan, with 37 state assembly seats held by PAS members and six seats held by BERSATU members, including the plaintiff;

(g) on 7 November 2023, the plaintiff published a media statement expressing his support for the administration of the current Prime Minister and the Pembentangan Belanjawan tabled by the Prime Minister;

(h) on 17 May 2024, the plaintiff received a letter from the second defendant containing *Arahan MPT BERSATU*, which demanded that the plaintiff retract his support for the Prime Minister;

(i) on 29 May 2024, the plaintiff wrote a reply letter to the second defendant seeking clarifications regarding the Arahan MPT BERSATU;

(j) on 30 May 2024, the second defendant replied directing the plaintiff to

abide by Arahan MPT BERSATU, failing which the plaintiffs membership in BERSATU would cease;

(k) on 12 June 2024, the plaintiff received a letter from BERSATU informing him that he has been expelled from BERSATU;

(l) on 19 June 2024, the Speaker, announced that pursuant to cl 3, art 31A of the Laws of the Constitution of Kelantan, there is a casual vacancy in the N43 Nenggiri seat;

(m) the EC subsequently announced that the Special By-Election Meeting N43 for Nenggiri seat would be held on 28 June 2024;

(n) on 24 June 2024, the plaintiff filed this OS challenging the Speaker's decision in declaring the casual vacancy for the seat of the State Legislative Assembly of Nenggiri;

(o) on 25 June 2024, the plaintiff filed this application for an interlocutory injunction (encl 6);

(p) on 26 June 2024, the plaintiffs parliamentary seat for P032 Gua Musang was also challenged. The plaintiff provided a written explanation to the Speaker of Parliament regarding this issue;

(q) on 27 June 2024, the High Court dismissed the plaintiffs application for an ad interim injunction;

(r) on 28 June 2024, the EC held a special by-election meeting and took steps to carry out the by-election for the seat of N43 Nenggiri, including issuing an election writ and announcing nomination and polling dates. Postal voting commenced;

(s) on 9 July 2024, the Speaker of Parliament issued a letter stating that the P032 Gua Musang parliamentary seat is not vacated;

(t) on 23 July 2024 the application for postal voting closed. When this matter for interim injunction arguments was heard, the EC had already issued 43 postal ballots to eligible voters;

(u) on 3 August 2024 was the nomination date for the N43 Nenggiri seat (the date was announced by EC earlier). One Rizwadi Ismail from Parti Islam Se-Malaysia (PAS) and Awie for Barisan Nasional became candidates. The plaintiff did not participate;

(v) campaign by the candidates for the N43 Neggiri seat can be conducted until 16 August 2024 at 11.59am; and

(w) the polling day is on 17 August 2024.

PRELIMINARY ISSUE

[9] A bevy of senior, abled advocates was before this court to ventilate their respective positions. Before the substantive arguments, the objections by the first and second defendants were heard whereby they contended that Datuk Kapten (B) Muhammad Suhaimi Yahya ought to have been named as he is allegedly the public officer of BERSATU. There were no official documents adduced to corroborate this fact. Nevertheless, s 9(c) of the Societies Act 1966 ('the SA') provides that a registered society may sue or be sued through its public officer or office bearer. This court agrees with the position of the plaintiff in citing the first and second defendants in their capacity as President and Secretary General of BERSATU respectively in this suit. There is no prejudice (whether shown or otherwise by the First and second defendant), and the opportunity to be heard is accorded to BERSATU. So, there is no breach of s 2 or s 9(c) of the SA.

[10] At this interim injunction hearing, this court allows all submissions including the court's powers to grant interlocutory injunction orders against the government and its officers even when the application for the ad interim injunction was dismissed. The inter partes interlocutory injunction hearing was to enable the parties to canvas all the respective parties' legal positions in totality for this court's determination.

ARGUMENTS BY THE PLAINTIFF

[11] The learned counsel for the plaintiff argued that the mandatory requirements under the law on interlocutory injunction have been fulfilled. The celebrated case of *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193; [1994] 1 MLRA 454; [1995] 1 CLJ 293; [1995] 1 AMR 373 led the way. This court was reminded that those requirements were reinforced by the Federal Court in *Jaya Sudhir a/l Jayaram v Nautical Supreme Sdn Bhd & Ors* [2019] 5 MLJ 1. Additional references to s 25 of the Courts of Judicature Act 1964 ('the CJA') and *Majlis Peguam & Anor v Tan Sri Dato' Mohamed Yusoff bin Mohamed* [1997] 2 MLJ 271 were made to highlight that this court has the power to grant an injunction or a stay. A further reference to s 51 of the Specific Reliefs Act 1950 and the Federal Court's decision in *Majlis Perbandaran Pulau Pinang v Boey Siew Than & Ors* [1979] 2 MLJ 127.

[12] It is also the plaintiffs submissions that although s 29 of the Government Proceedings Act 1956 ('the GPA') and s 54 of the Specific Reliefs Act 1950 ('the SRA') do not allow injunction to be granted against the government and/or its officers where it would interfere with the public duties of any department of the government, there were cases where the court previously had granted such orders. The cases for illustration cited are:

(a) *Tengku Haji Jaafar & Anor v Government of the State of Pahang* [1978] 2 MLJ 105; [1977] 1 MLRH 120;

(b) *Sabil Mulia (M) Sdn Bhd v Pengarah Hospital Tengku Ampuan Rahimah & Ors* [2005] 3 MLJ 325;

(c) *Minister of Finance, Government of Sabah v Petrojasa Sdn Bhd* [2008] 4 MLJ 641; [2008] 1 MLRA 705;

(d) *Harris Mohd Salleh v The Returning Officer, Ismail bin Haji Majin & Ors and another action (No 2)* [2001] 6 MLJ 610; [2001] 1 MLRH 755; [2001] 3 CLJ 838; and

(e) *Dato' Abu Hasan bin Sarif v Dato' Dr Abd Isa bin Ismail* [2012] 2 MLJ 429; [2012] 1 MLRA 565.

[13] This application for interim injunction is in actual fact aimed directly at the Speaker and the EC as the mission is to injunct them from proceeding with the mandatory requirements of their respective office. The plaintiff highlighted that a key issue is that the notice sent by the Speaker to the EC denied the plaintiff a right to be heard. The plaintiff claims that the Speaker had breached the rules of natural justice when it decided to announce the casual vacancy of N43 Nenggiri. The plaintiff repeated its submissions that the Speaker does not possess such unfettered discretion, which must be exercised reasonably and lawfully — *Pengarah Tanah & Galian Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd* [1979] 1 MLJ 135, *Sinlexion Construction & Decoration Sdn Bhd v BCB Berhad* [2020] MLJU 610 and *Syarikat Perkapalan Selatan Sabah Sdn Bhd v State Government of Sabah & Ors* [1991] 1 MLJ 370 were cited.

[14] The plaintiffs arguments stream into the EC not having any public duty before it to call for a by-election when the announcement by the Speaker was purportedly defective with no legal effect ab initio. The plaintiff cited *Interstate M&E Sdn Bhd & Ors v Fore-Sight Trading Sdn Bhd & Ors* [2007] 6 MLJ 677. This court was implored by the plaintiff to grant the interlocutory injunction to preserve the status quo before the issue is determined in this OS.

[15] In the plaintiffs submissions that there are serious bona fide issues to be tried, the reliefs sought were said to be not illusory or unsustainable (*The Speaker of Dewan Undangan Negeri of Sarawak Datuk Amar Mohamad Asfia Awang Nassar v Ting Tiong Choon & Ors and other appeals* [2018] 12 MLJ 176 was referred to). The plaintiff reminded this court that the first and second defendants contend that there are serious issues to be tried in this suit including the validity of BERSATU's constitution amendments, the legality of the plaintiffs termination from BERSATU, and whether there is in turn a casual vacancy as declared by the Speaker.

[16] For the plaintiff, 'irreparable harm' was mentioned in submitting that the balance of convenience lies in favour of granting the injunction. The plaintiff claims that to prevent irreparable harm to the plaintiff and confusion among the constituents of N43 Nenggiri the interim injunction must be granted. It was submitted that if the by-election was to proceed and at the end of this OS this court rules in favour of the plaintiff, another candidate would have been already elected for the N43 Nenggiri seat and he could not be reinstated.

[17] Although damages were pleaded for reliefs, the plaintiff submitted that damages are not an adequate remedy given the nature of the rights at stake. The plaintiff reiterated that the damage caused to the plaintiff is greater out of all proportion to any damage which might be suffered by the defendants since the plaintiff contended that his position as the rightful ADUN of Nenggiri cannot and/or difficult to be rectified once a new ADUN has been appointed for that seat.

THE OBJECTIONS BY THE EC

[18] The EC outrightly submitted that this application is a non-starter. The learned senior federal counsel for the EC submitted that this application has already been rendered nugatory based on plaintiffs own submissions during the ad interim injunction application whereby he submitted that the OS will be academic and nugatory if the by-election was to proceed. The plaintiffs affidavit in support had conceded too, on the point that this suit would be rendered nugatory and futile if the EC proceeded with instructions and commenced the process for the by-election. Premised on the fact that the campaign is ongoing at the moment, the application for postal voting has been closed, and the polling date of 17 August 2024 has been set, the EC argued that this application must fail at the outset.

[19] The EC reiterated their position that the court has no jurisdiction to grant an injunction against the government or its officers under s 29 of the GPA and s 54 of the SRA. The EC cited the following cases to demonstrate the legal position — the Supreme Court's decision in *Government of Malaysia v Lim Kit Siang; United Engineers (M) Berhad* [1988] 2 MLJ 12; [1988] 1 CLJ Rep 63, and the Court of Appeal's in *Superintendent of Lands and Surveys, Kuching Division & Ors v Kuching Waterfront Development Sdn Bhd* [2009] 5 MLJ 607; [2009] 6 CLJ 753, *Tan Bun Teet & Ors v Menteri Sains, Teknologi dan Inovasi Malaysia & Ors* [2013] 3 MLJ 676; [2013] 3 CLJ 1115 and *Superintendent of Land and Surveys, Bahagian Mukah & Anor v Bunyak Anak Gadin & Ors* [2016] MLJU 1739; [2016] 5 CLJ 558 to support its arguments.

[20] Article 114(1) of the Federal Constitution ('the FC') provides that the

EC comprises of a chairman, a deputy chairman and five other members appointed by the Yang di-Pertuan Agong after consultation with the Conference of Rulers. They are nonetheless in the employment of the Government of Malaysia though to maintain their independence; their removal is akin to that of a Federal Court judge and their remuneration is provided for by Parliament from the consolidated fund. Thus, it is the EC's submissions that ss 2 and 29(2) of the GPA apply to the EC and its members. This was decided in *Abdul Ghapur bin Haji Salleh v Tun Datuk Haji Mohamed Adnan Robert Yang Di-Pertua Negeri Sabah & 7 Ors* [1987] 2 MLJ 724. The EC had also submitted the fact that it did not act silo but receives assistance from all public authorities to drive home the point that they are considered as government for the purposes of GPA. This point is not in contention.

[21] It was the submissions of the EC that it and the Speaker should not be hampered in carrying out their constitutional duties and that the plaintiff is barred from seeking the interim injunction which had the effect of such, by virtue of s 29 of the GPA and implemented in *Tun Dato Haji Mohamed Salleh bin Abas v Tan Sri Dato Abdul Hamid bin Omar & Ors* [1988] 3 MLJ 149; [1988] 1 MLRA 149. This court was also referred to by the EC to a list of cases where the courts, in cases that involved the EC, refused to injunct and restrain the EC from carrying out its constitutional function as provided under the FC — amongst them *Election Commission, Malaysia v Abdul Fatah bin Haji Haron* [1987] 2 MLJ 716; [1987] 1 MLRA 232; [1987] CLJ 92. The plaintiff claims that if the by-election was to proceed then:

(a) his OS would be rendered nugatory as his post would erroneously be given to another candidate who would be appointed later impacting the country's political stability;

(b) it would have the effect of depriving the residents of Nenggiri to be represented by the representative they had chosen; and

(c) the massive public funds incurred for the by-election would go to waste in the event this court finds that the plaintiff is still a member of BERSATU.

[22] The EC submitted that it is an institution created by art 113 of the FC and is the body entrusted to conduct elections to the House of Representatives and the Legislative Assemblies of the States. The EC is executing its duty as required under art 31A(4) read together with art 46(5) of the Law of the Constitution of Kelantan. This EC maintains that this duty ought not to be hampered in any way as illustrated in the Supreme Court's decision in the *Abdul Fatah*'s case as EC plays a vital role in the democratic process of our nation.

[23] The EC additionally submitted that there is no underlying cause of

action against it that the injunction can be anchored on. According to the EC, no action can be initiated against it as s 6 of the Election Commission Act 1957 ('the ECA') read together with s 107 of the Subordinate Courts Act 1948 ('the SCA') grant protection of the EC from legal suits for any act in the execution of its duty. The EC invited this court to peruse the cause papers of this suit and emphasized that there is no cause of action pleaded against the EC. Hence, this interim injunction application must fail. Reference to the authorities as to cause of action and that the right to obtain an interlocutory application is dependent on a pre-existing cause of action are *Siskina (owners of Cargo Lately Laden On Board) and others and Distos Compania Naviera SA* [1979] AC 210, *Nasri v Mesah* [1971] 1 MLJ 32; [1970] 1 MLRA 363, *Shahrul Iman bin Abdullah v Pacific & Orient Insurance Co Bhd and another appeal* [2020] MLJU 1877; [2021] 1 MLRA 658.

[24] Quoting all those reasons above, the EC had also submitted that it was against the public interest to grant the interim injunction. It was argued that the plaintiff suffers no irreparable harm as the right to participate in the by-election was never denied.

THE OBJECTIONS BY THE SPEAKER

[25] The Speaker's objections were eloquently delivered by his learned counsel. As the Speaker of the Kelantan State Legislative Assembly, he claims that he had acted in accordance with cl 3, art 31A of the Laws of the Constitution of Kelantan (Kelantan State Constitution) when declaring a casual vacancy for the N43 Nenggiri seat. It was argued that the Speaker was not required to conduct a due inquiry or give the plaintiff an opportunity to be heard before making the declaration of vacancy. The Speaker contends that he acted within his constitutional duties and should not be restrained from performing these duties through an injunction.

[26] It is timely here to reproduce art 31 of the Kelantan State Constitution which is the basis for the unfolding of events:

> (1) Subject to the provisions of this section, a member of the Legislative Assembly shall cease to be a member of that Legislative Assembly and his seat shall become vacant immediately on a date a casual vacancy is established by the Speaker under subsection (3) if —
>
> (a) Having been elected to the Legislative Assembly as a member of a political party —
>
> (i) He resigns as a member of the political party; or
>
> (ii) He ceases to be a member of the political party; or
>
> (b) Having been elected to the Legislative Assembly otherwise than as a member of a political party, he joins a political party as a member.

(2) Whenever the Speaker receives a written notice from any member of the Legislative Assembly on the occurrence of a casual vacancy among the members of the Legislative under this section, the Speaker shall establish that there is such a casual vacancy and notify the Election Commission accordingly within twenty-one days from the date he received the written notice.

(3) For the purposes of holding an election under subsection (5) of section 9, such casual vacancy shall be filled within sixty days from the date the Election Commission receives the notification from the Speaker.

[27] It was submitted that the Speaker's duty was to ascertain that there was a casual vacancy of the N43 Nenggiri seat. To ascertain the reasons is not an expressed duty of the Speaker. As such the doctrine of *audi alteram partem* is not applicable here to attract the argument of breaches of natural justice as alleged by the plaintiff (*Bimach Powerhouse Sdn Bhd v Sanizal bin Mahamad* [2021] MLJU 1642; [2021] CLJU 1341).

[28] Submissions for the Speaker included the argument that the issue of whether amendment to cll 10.4 to 10.6 together cl 10.2 of the BERSATU constitution are not issues in the interim injunction as the purpose of the interim injunction is not to dispose of the matter in the main suit. In beseeching this court that the interim injunction is frivolous and vexatious, the learned counsel for the Speaker pointed out that the plaintiff had failed to offer himself as a candidate for the by-election when there was no legal impediment for him to do so. In a rather colourful fashion, this court heard that the plaintiff was at liberty to participate as a candidate in the by-election, as an independent candidate or under whichever banner he fancies. It was submitted that the plaintiff has never been denied his rights pursuant to art 10 of the FC, s 5 of the Eight Schedule and s 30 of the Kelantan State Constitution.

[29] In other words, the Speaker asserts that the plaintiff on one hand complains his rights to serve his constituency Nenggiri has been tempered by the declaration that his seat is vacant yet on the other hand, he did not offer his candidacy for the by-election. To further boost the argument that the plaintiffs interim injunction serves no useful purpose the Speaker takes the position that his office also attracts the protection accorded by s 29 of the GPA and s 54 of the SRA.

[30] The point of public interest was also taken up by the Speaker. It was his submissions that an interim injunction order would tantamount to a disservice to the country and its electorate processes.

[31] This court notes that the Speaker's reply on the issue of whether s 18C of the SA applies to the plaintiff is a matter to be decided upon at the main trial, not at this juncture. This issue is also one of the main arguments of the first and

second defendants and this court decides that the issue will be determined at the hearing for the OS. Nevertheless, it was briefly submitted that the members of BERSATU have a right to decide who they want to be associated with and that they cannot be compelled to accept any one that they wish otherwise. The other issue which the Speaker submitted ought to be ventilated at the main hearing is whether 'political party' membership referred to PAS or BERSATU.

THE OBJECTIONS BY THE FIRST AND SECOND DEFENDANTS

[32] They supported the objections by the Speaker and the EC that it is a matter of statutory provisions and public policy that the injunction sought for by the plaintiff cannot be enforced as a matter of law. The learned counsel for the first and second defendants submitted that it is unfeasible to grant the interim injunction as it impedes them from fulfilling their constitutional and governmental duties. Aside from the *Abdul Fatah*'s case, the Court of Appeal's case of *Suruhanjaya Pilihan Raya & Ors v Kerajaan Negeri Selangor* [2018] 4 MLJ 350; [2018] 1 LNS 209 was referred to, in particular para 11, 12 and 17 of the judgment that stated:

> A consideration for the catenation of authorities confirms the view that has been expressed above. The courts in fact recognise the constitutional function of the commission in relation to the democratic process sets our in art 113 of the Federal Constitution and has consistently refused the granting of interim injunctions. This was decided in *Election Commission, Malaysia v Abdul Fatah bin Haji Haron* [1987] 2 MLJ 716 and the Supreme Court there held:
>
> > It is not that the court has no jurisdiction to hear an application of this nature but that the court must bear in mind that the Election Commission was performing its constitutional functions under the law. The election process is prescribed in the Constitution. The election Commission is given a vital role in this democratic process.
> >
> > ... Therefore it is not a question of the court having no jurisdiction but that the court should decline to exercise its jurisdiction so as not to hinder the democratic process.
>
> Similarly, in its earlier decision, the Supreme Court in *Saman Gulam v Tan Sri Haji Mohd Sunoh Marso & Ors*; *Lau Pui Keong v Tan Sri Haji Mohd Sunoh Marso & Ors*; *Ahmad Bahrom bin Datuk Hj Abu Bakar Titingan v Tan Sri Haji Mohd Sunoh Marso & Ors* [1987] 2 MLJ 718 expressed the view *that the commission performed its functions under the Federal Constitution which were clearly spelt out in art 113 thereof and held that the judge was correct in not granting the interlocutory injunction against the commission*.
>
> ...
>
> *In the case before this court, the next point of importance whichthe learned judge ought to have considered is the justice of the case*. The learned judge, as it is clear to us, only takes into account the rights of the parties to the proceedings in this case. In my opinion, this is not a case of merely doing justice between the immediate parties to

the proceedings. *There is a wider interest of the democratic process, the doctrine of separation of powers and the parties that are concerned with the commission in carrying out its functions. The learned judge I need say, granted the stay order completely oblivious to the rights of the other states and electors in Peninsular Malaysia* ...

[33] It was their submissions that a dangerous precedent would be set should this court grant the interim injunction as it would pave the way for litigants to seek injunctions and stays of elections, significantly disrupting the democratic process and undermining the electoral system. They also submitted that there was no underlying cause of action in the claim which the injunction can be anchored on. Furthermore, the submissions on the law of the court's jurisdiction to entertain matters and/or decisions by a political party authorised by its constitution or rules or regulations involving a political party as per s 18C of the SA was expanded. The legal provision of s 18C of the SA states:

Decision of political party to be final and conclusive. The decision of a political party or any person authorised by it or by its constitution or rules or regulations made under the constitution on the interpretation of its constitution, rules or regulations or on any matter relating to the affairs of the party shall be final and conclusive and such decision shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any ground, and no court shall have jurisdiction to entertain or determine any suit, application, question or proceedings on any ground regarding the validity of such decision.

[34] They submitted that this 'ouster clause' has been enforced in cases like *Pendaftar Pertubuhan Malaysia v PV Das (bagi pihak People's Progressive Party of Malaysia (PPP)) (Datuk M Kayveas, intervener)* [2003] 3 MLJ 449; [2003] 3 CLJ 404; [2003] 1 MLRA 357, *Pendaftar Pertubuhan v Datuk Justin Jinggut* [2013] 3 MLJ 16; [2013] 2 CLJ 362; [2013] 2 MLRA 611; [2013] 2 AMR 310 and *Salihudin bin Hj Ahmad Khalid & Ors v Pendaftar Pertubuhan Malaysia & Anor* [2020] 2 MLJ 244. The purpose of the enactment of s 18C of the SA as submitted by the first and second defendants was to keep all disputes pertaining to the affairs of a political society out of the scrutiny of the courts. The first and second defendants as with the Speaker and the EC submitted at length on the ratio decidendi of *Dewan Undangan Negeri Kelantan & Anor v Nordin bin Salleh & Anor* [1992] 1 MLJ 697. Our Federal Court recently affirmed that while the *Nordin Salleh*'s case correctly acknowledged the right to form associations encompasses the right to disassociate, it had erred in concluding the right of an elected representative to switch political parties is inherently part of the right of association provided by art 10(1)(a) of the FC. The Federal Court held that:

In our view, once an elected representative has succeeded in an electoral contest on the ticket that he sought, he has exercised his right of association by contesting on that ticket. Once he is in the House or the State Legislature, the nature of his

association takes on a different character in that it is no longer his personal right to associate but now governed by the ticket he stands on upon having been given the mandate by the electorate that entrusted to him that position.

Zulkifli bin Ibrahim v The Penang State Legislative Assembly & Anor (Federal Court Civil Appeal No 06(RS)-1–05 of 2022) (unreported), *Afif bin Bahardin v The Penang State Legislative Assembly & Anor* (Federal Court Civil Appeal No 06(RS)-2–05 of 2022(P)) (unreported) and *Khaliq Mehtab bin Mohd Ishaq & Anor v The Penang State Legislative Assembly* (Federal Court Civil Appeal No 06(RS)-3–05 of 2022) (unreported).

[35] It is the position of the first and second defendants in opposing this interim injunction application that the plaintiff when he was ADUN N43 Neggiri, no longer has the personal right to associate and speak but is governed by the rules relating to remaining qualified to be a member of the State Assembly. So once his membership ceases (for any reason at all), he loses his qualification in the State Assembly. For all these reasons, the First and second defendant submitted that there is no substantive cause of action in this claim upon which this application for interim injunction.

[36] Concerning irreparable damage submitted by the plaintiff. The response by the first and second defendants is this. When the plaintiff agreed to join BERSATU, he is bound to abide by the rules and the policies of the political party, and he is entrusted to be loyal to BERSATU and its shared beliefs. The factual matrix shows that the plaintiff ceased to be a member of BERSATU because he had failed to comply with the directives issued. The consequent actions by the Speaker and thereafter the EC are according to the procedures that are currently progressing through the normal course of action. They submitted that the purpose of the anti-defection law under the Federal Constitution and the Kelantan State Constitution is to make elected representatives accountable to the voters for their political affiliation. The calling of a by-election fulfils that purpose which will be defeated by the granting of an interim injunction.

ANALYSIS AND ASSESSMENT BY THIS COURT

[37] First and foremost, it is clear in this court's mind that this concerns a matter of membership of a political party — BERSATU in this case. It is pertinent to start on this premise because the plaintiff contested and won the N43 Nenggiri seat on the ticket of PAS whilst he was a member of BERSATU. The political history here showed that BERSATU and PAS formed part of the coalition that is Perikatan Nasional. Instead of campaigning and contesting on the flag of Perikatan Nasional, the plaintiff did so with PAS. The main issue in the plaintiffs OS, is that of his membership with BERSATU. He claims that he

was unlawfully terminated on 12 June 2024. That, this court will determine at the hearing of the OS.

[38] After the termination of his membership of BERSATU, the Speaker announced pursuant to cl 3, art 113 Kelantan State Constitution the casual vacancy of N43 Nenggiri seat. This was followed with the notice of the same to the EC and EC started the procedures of the by-elections according to the FC, which is currently in motion.

[39] The plaintiffs membership is not to be confused with candidacy which is the matter of under which ticket he was the candidate for the election of the N43 Nenggiri seat. It is imperative to view this distinctively as the plaintiff highlighted more than once that the plaintiff won the N43 Nenggiri seat and the Gua Musang Parliamentary seat as a candidate of PAS. During arguments, the plaintiff had also vocalised his issue of what flag or ticket should he run on for the by-election. This addresses the point proffered by the defendants that he could still contest in the by-election and offer himself as a candidate. The distinction between the issue of membership and candidacy will also be relevant in assessing the plaintiffs claim of irreparable damage, and the submissions by the defendants that this application for interim injunction serves no purpose as it has been overtaken by the events of the ongoing by-election, which the plaintiff has chosen not to participate.

[40] Although all the defendants had collectively advocated their strong objections, this court addresses each one of them in turn as the capacity and injunctive reliefs the plaintiff sought from each one differ.

[41] The principle in relation to GPA and SRA as held by the Supreme Court in *Government of Malaysia v Lim Kit Siang* has been upheld by the Court of Appeal in the *Tan Bun Tee*'s case and *Bunyak Gardin*'s case. No injunction could be directly or indirectly issued against the government or its officers. Bound as per the principle of stare decisis, this court applies the statutory bar provided in s 29(2) of the GPA and s 54 of the SRA that prohibit the granting of injunctions against government bodies like the EC. This is a fundamental legal barrier to the relief sought in this application for interim injunction.

[42] The EC performs vital constitutional functions as acknowledged in the *Abdul Fatah*'s case so courts including this court should decline to exercise jurisdiction that would hinder the democratic process. This court opines that the granting of the interim injunction is equivalent to an interference with these constitutional functions. This court will avoid hindering the democratic process for the required by-election voting.

[43] When it comes to public interest, the spectrum is wider than just the

plaintiff. As cited by the first and second defendants, the Court of Appeal in *Datuk Bandar Kuala Lumpur v Abdul Aziz bin Mohamed Ginan & Ors* [2007] 4 MLJ 346; [2007] 1 MLRA 327 held that when the defendant is a public authority, the balance of convenience must consider the wider public interest. The ratio decidendi of the case can be found at para 14 of its judgment:

> Secondly, we have to consider that the DUKE Project is of public interest as the purpose is to ease the traffic flow in the city of Kuala Lumpur. The interim injunction pending trial which was granted by the learned judge would cause the DUKE Project to be delayed or abandoned as the full trial would take some considerable time to be concluded. The defendant in this case is a public authority performing duties to the public and on this premise we would venture to state that the balance of convenience would have to lean in favour of the defendant in not granting the injunction sought for by the plaintiffs (see the case of *Smith & Ors v Inner London Education Authority* [1978] 1 All ER 411).

[44] The key points of the ratio decidendi are:

(a) when considering an injunction against a public authority, the court must take into account the public interest;

(b) the balance of convenience in such cases tends to favour the public authority performing its duties to the public; and

(c) an interim injunction that would delay or prevent a project of public interest (in that case, a highway project) should not be granted, especially when the full trial would take considerable time.

[45] In this case, the constitutional requirements of the by-election is already in full swing with specific mandatory time frame for each stage. The balance of convenience and public interest at this juncture strongly favour allowing the electoral process to proceed unimpeded. Granting an injunction could potentially disenfranchise the voters of N43 Nenggiri seat and create uncertainty in the democratic process.

[46] There is also a lack of cause of action against the EC. The plaintiff has not demonstrated a clear cause of action against the EC specifically, which is a prerequisite for granting an interlocutory injunction against it. The principle that an interlocutory injunction must be anchored to a cause of action is established in cases like *Tetap Tiara Sdn Bhd* case.

[47] The statutory protection enjoys by the EC under s 6 of the ECA further supports the argument against granting an interim injunction to stay the by-elections. There also exists in this case practical considerations; the EC has already taken significant steps towards conducting the by-election, including issuing writs and announcing nomination and polling dates. Halting this process now whereby the campaign has already started, could lead to logistical

complications and unnecessary public expenditure. Although it must be emphasized that the implementation of this electoral process for representatives of the people in a democratic nation prevails as the paramount consideration not to injunct the EC.

[48] Based on the analysis above, this court dismisses the application for interim injunction against the EC. The legal, constitutional, and public interest factors overwhelmingly support allowing the EC to proceed with its duties without judicial interference at this stage of the proceedings. The plaintiffs recourse, if any, lies in the substantive hearing of his claims rather than in seeking to halt the electoral process through an injunction.

[49] The plaintiffs complaint that the Speaker did not 'establish' that there was a casual vacancy of N43 Nenggiri seat because the plaintiff was not given a chance to inform the Speaker his version of the termination is untenable. Article 31A of the Kelantan State Constitution did not provide such. The uncontested averments on the following facts are sufficient to this court's mind that the Speaker had executed his legal obligations sufficiently:

(a) the Speaker received a notice from State Assemblyman of Air Lanas that the plaintiff was no longer a member of BERSATU as of 13 June 2024;

(b) attached to the said notice was a letter from the second defendant dated 12 June 2024 that confirmed the cessation of the plaintiffs membership of BERSATU; and

(c) upon the advice of the State Legal Advisor of the same and after perusing and examining the contents of the Notice and the accompanying letter from the second defendant, the Speaker found that the conditions precedent of art 31A(a)(ii) of the Kelantan State Constitution were fulfilled and proceeded to notify the EC of the casual vacancy of N43 Nenggiri seat.

[50] This court found that the Speaker was exercising his constitutional function. As established in the *Abdul Fatah*'s case and the *Suruhanjaya Pilihan Raya* cases, the courts should be reluctant to interfere with such functions. Given the office of the Speaker, this court rules that there are statutory prohibitions; the granting an injunction against the Speaker would contravene s 29 of the GPA and s 54 of the SRA, which prohibit injunctions that interfere with public duties. The balance of convenience lies too, does not favour the granting of the interim injunction freezing the effect of the Speaker's notice that puts a halt to the by-elections that is currently ongoing. It is not in the public interest as stated above. The wider public interest in maintaining the integrity of the democratic process and ensuring timely elections most certainly outweighs the plaintiffs individual interest in this case.

[51] More importantly, this court is persuaded by the submissions on behalf of the Speaker that this interim injunction application serves no useful purpose. This court is of the considered opinion that the plaintiff was never prevented from running for the by-election and winning back the N43 Nenggiri seat. The arguments by the plaintiff that he could not contest as: (a) there was an issue as to which ticket he should contest on; or (b) there exists a question of him being the candidate of which political party; or (c) what if he wins his OS and this court declares the termination invalid and that he was always a member of BERSATU which meant that the N43 Nenggiri seat never had a casual vacancy, this court finds untenable. There was never any legal impediment for him to offer himself as a candidate.

[52] In the event that this court rules in his favour and grants the reliefs he sought which would tantamount to him never ever ceased his membership of BERSATU, this court can declare in such situation, the results of this by-election null and void by reason that there was never a casual vacancy as the termination was invalid. However, his failure to do offer candidacy to the EC on 3 August 2024 meant that he is no longer interested in running for N43 Nenggiri seat. That renders his application for the interim injunction academic serving no useful purpose.

[53] This court does not accept the contention that injuncting the effect of the Speaker's notice and the EC from carrying out its constitutional duty in holding the by-election would save costs of parties. This is because the democratic processes enshrined in our Federal Constitution must proceed without any interference from the Judiciary. It is imperative that there must be separation of powers to limit any one branch from exercising the core function of another. This limits interferences and implement the check and balance for the nation.

[54] Based on the legal principles involved, the plaintiffs claim of irreparable harm or damage is significantly weakened by his decision not to contest in the by-election. The Speaker raised these arguments as the first and second defendants whose reasons are apparent in their submissions. Before this court rules on that issue, this court addresses the point on public interest submitted by the Speaker. There are declaratory orders sought by the plaintiff that can be done without the need for an interim injunction. The by-election will determine the true will of the people. It is indeed the opportunity to show the approval or disapproval of the plaintiff as their representative. The public interest element would not be disserved by the interim injunction. Therefore, this court dismisses the application for interim injunction against the Speaker. The constitutional and public interest considerations strongly favour allowing the Speaker to carry out his duties without judicial interference at this stage of the proceedings

[55] One of the overlapping issues between the submissions of the Speaker and that of the first and second defendants is the issue of irreparable harm. In their submissions, their argument that the plaintiff suffers no irreparable harm and/or damage even if the injunction is not allowed. This court agrees with their submission that the plaintiff could have still participated in the by-election yet has stated he will not be contesting in the upcoming by-election for N43 Nenggiri on 17 August 2024. The plaintiff instead plans to make way for a candidate from the Pakatan Harapan-Barisan Nasional unity alliance. This court accepts their argument that these statements indicate the plaintiff does not anticipate suffering irreparable harm or damage, suggesting there is no basis for injunctive relief. They suggested that the plaintiffs refusal to contest implies he is aware that voters might punish him for betraying their trust.

[56] Given these points, this court finds difficulty in accepting the plaintiffs position that he has suffered irreparable harm or damage when:

(a) he had the legal option to contest the by-election and potentially retain his seat;

(b) he chose not to exercise this option; and

(c) the law does not prevent him from contesting.

[57] The principle of duty to mitigate in law would also work against the plaintiffs claim of irreparable harm. By choosing not to contest the byelection, the plaintiff has not taken reasonable steps to mitigate any potential harm or damage he claims to suffer. Thus, based on the materials provided and legal principles, the plaintiffs decision not to contest in the by-election significantly undermines any claim of irreparable harm or damage, as he had a clear opportunity to potentially remedy the situation but chose not to pursue it.

[58] This court is also in agreement that the anti-hopping laws (art 49A of the FC and art 31A of the Kelantan State Constitution) do not prohibit the plaintiff from contesting in the by-election, unlike other forms of disqualification. The ruling on the other arguments is as stated above for the EC and the Speaker of which this court shall not repeat here.

[59] The other argument that this court has analysed is the recent decision by the Federal Court in the *Zulkifli Ibrahim & other appeals* which decision is significant for its interpretation of constitutional rights related to political party membership for elected representatives. One observation as stated earlier that the Federal Court held that while the *Nordin Salleh*'s case correctly stated that the right to form associations includes the right to dissociate, it was incorrect in finding that an elected representative's right to change political parties is part of the right of association guaranteed by art 10(1)(c) of the FC.

[60] The Federal Court interpreted art 10(1)(c) of the FC and held that the right to be a member or to remain a member of the House or a State Assembly is not a right guaranteed by art 10(1)(c) of the FC. In fact, art 10(1)(c) is not engaged in such situations. On the nature of political representation, it was emphasized that an elected representative's ability to change party membership is not a personal right of a citizen to form associations as envisioned in art 10(1)(c). Instead, it is part of the proper functioning of Parliamentary democracy and can be validly restricted and regulated by laws passed by the State Legislature. Further, an individual's personal right to associate is distinguished from the nature of political representation. Once elected, the nature of an elected representative's association takes on a different character, governed by the mandate given by the electorate rather than personal choice.

[61] The application of the said principles in the judgment significantly undermines the plaintiffs argument that his right to support the current government or change political allegiances is protected under our FC when it was clearly ruled that such actions by elected representatives are not covered by the constitutional right of association. The judgment supports the validity of anti-hopping laws, both at the federal and state levels. This strengthens the position of the first and second defendants in arguing that the plaintiffs seat can be declared vacant based on his actions. The decision suggests that political parties have more leeway in controlling the actions of their elected representatives, as changing party allegiance is not considered a constitutionally protected right.

[62] On the interpretation of casual vacancy; the judgment provides a basis for interpreting laws related to casual vacancies in a way that favors political stability and party discipline, which aligns with the actions taken by the Speaker in declaring a vacancy. The Federal Court's emphasis on the proper functioning of Parliamentary democracy supports arguments that the public interest is best served by maintaining party discipline and electoral mandates, which could weigh against granting an injunction that would interfere with the by-election process. By clarifying that changing political affiliations is not a constitutionally protected right for elected representatives, the judgment potentially limits the scope for judicial intervention in such matters, supporting arguments against granting the injunction.

[63] In conclusion, the *Zulkifli bin Ibrahim & other appeals* significantly strengthens the position of the defendants. It provides a constitutional basis for actions taken against elected representatives who change their political allegiances. Thus, it undermines key aspects of the plaintiffs claims, and supports arguments that the democratic process (including the holding of by-elections in such circumstances) should be allowed to proceed without judicial interference through injunctions

CONCLUSION

[64] Luminated by the foregoing analysis, this court finds that the plaintiff has failed to satisfy the requirements for granting an interlocutory injunction. The application raises complex constitutional issues that are more appropriately addressed in the main suit. The balance of convenience clearly lies in favour of allowing the democratic process to proceed unimpeded. The plaintiffs decision not to contest in the upcoming by-election significantly undermines his claim of irreparable harm. Moreover, the statutory prohibitions against injunctions interfering with government functions, as well as the ouster clause in s 18C of the Societies Act 1966, present formidable legal barriers to the relief sought.

[65] Considering all these factors, this court is compelled to dismiss the application for an interim injunction. The plaintiffs recourse, if any, lies in the substantive hearing of his claims rather than in seeking to halt the electoral process through an injunction at this stage.

[66] The application for interim injunction in encl 6 is hereby dismissed. Costs are awarded to the defendants. A total of RM10,000 to the first and second defendants. To the Speaker and the EC costs are awarded in the sum of RM10,000 respectively.

Application for interim injunction dismissed.

Reported by Ashok Kumar